



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/173257

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 30, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a hearing was held on May 05, 2016, at Kenosha, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to a January 1, 2016 case closure and whether the agency correctly denied a subsequent application for Medicaid for failing to verify.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner was Medicaid eligible and, in early December 2015, notified the agency that she had begun to receive income from a trust established by her mother.
3. The trust involved here was established by Petitioner's mother in 1991 in Illinois. Petitioner has no authority to revoke the trust.
4. The agency had a copy of the trust document set up by Petitioner's mother but upon learning that Petitioner had begun to receive income from the trust sent Petitioner a request for verification of the assets of the trust.

5. The agency did not receive verification of assets and discontinued Petitioner's benefits effective January 1, 2016. Petitioner was so notified via a notice dated December 17, 2015. That notice contains appeal instructions and notes an appeal deadline of February 16, 2016.
6. Petitioner reapplied for elderly, blind and disabled Medicaid on February 24, 2016. The agency sent Petitioner a request for verification again seeking asset information. It did not receive that information and denied Petitioner's application and so notified her with a notice dated March 9, 2016.
7. The trust contains the following provision concerning distributions from the trust to Petitioner:

Article III

...

2. Commencing with Grantor's death and during the life of her daughter, [Petitioner herein], if she survives the Grantor:

(a) The Trustee may use for her benefit as much or all of the income of the trust as the trustee determines to be required or desirable for her support, welfare, education and best interests, adding excess income to principal.

(b) The trustee may in the trustee's discretion pay to her, or use for her benefit, as much or all of the principal of her trust as the trustee from time to time determines to be required or desirable for her support, welfare, education, and best interests.

8. Petitioner filed this appeal on March 30, 2016.

### **DISCUSSION**

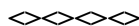
In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. *§49.45(5)(a), Wis. Stats.* Here it is apparent that the hearing was requested after the February 16, 2015 appeal filing deadline for the January 1, 2016 discontinuance of Medicaid. Thus the appeal is untimely as to the January 1, 2016 case closure and the Division of Hearings and Appeals without authority to act.

As for the more recent application and denial, the appeal is timely and Petitioner contends that the agency was over verifying in asking about assets and should not have denied her application because of assets as the trust should not be counted.

The relevant Medicaid Eligibility Handbook sections are as follows:

#### **16.6.4.1 Trust Established With Resources of a Third Party**

If the resources of someone other than the individual or their spouse (i.e., a third party), were used to form the principal of an irrevocable trust, the trust principal is not an available asset unless the terms of the trust permit the individual to require that the trustee distribute principal or income to him or her.



#### **20.1.4 Verification Rules**

1. Avoid over-verification (requiring excessive pieces of evidence for any one item or requesting verification that is not needed to determine eligibility). Do not require additional verification once the accuracy of a written or verbal statement has been established.

2. Do not verify information already verified unless there is reason to believe the information is fraudulent or differs from more recent information. If fraud is suspected, determine if a referral for fraud or for front-end verification should be made.
3. Do not exclusively require one particular type of verification when various types are adequate and available.
4. Verification need not be presented in person. Verification may be submitted by mail, fax, email, or through another electronic device or through an authorized representative.
5. Do not target special groups or persons on the basis of race, religion, national origin, or migrant status for special verification requirements.
6. Do not require the member to sign a release form (either blanket or specialized) when the member provides required verification.
7. Do not require verification of information that is not used to determine eligibility.

*Medicaid Eligibility Handbook, §§ 16.6.4.1 and 20.4.1.*

I am concluding that Petitioner's application of February 24, 2016 EBD Medicaid application was incorrectly denied. This trust was established by Petitioner's mother in 1991. It was funded by the mother. Further, the Medicaid Handbook clearly states that "...the trust principal is not an available asset unless the terms of the trust permit the individual to require that the trustee distribute principal or income to him or her." The trust contains no such provision.

Quite frankly, it made no difference for Petitioner's application how much money was in the trust – it is not a counted asset. The agency did have a partial bank state for the trust from 2013 that indicated that the trust had a balance in the six figures – the hearing record copy is not legible beyond that. Regardless, there was no need to seek verification of the assets of the trust. The value of those assets was not germane to the eligibility determination given the trust terms and was over verification.

As an aside as it is not relevant to the decision here – Petitioner's brother is the trustee and lives in Texas. The 2013 statement that the agency has is from a Texas financial institution. The brother had not been making distributions of income for the Petitioner until she reported it in December 2015 and has not cooperated with supplying asset information. He has been recalcitrant to the point that Legal Action of Wisconsin has had pro bono assistance from no less a respected law firm than [REDACTED] without obtaining optimal cooperation.

Finally, Petitioner understands that her Medicaid eligibility is predicated on meeting a Medicaid deductible and that is not an issue for this appeal and decision.

### **CONCLUSIONS OF LAW**

That Petitioner's February 24, 2016 EBD Medicaid application was incorrectly denied.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to reverse the denial of the February 24, 2016 EBD Medicaid application and determine the amount of the deductible. This must be done within 10 days of the date of this Order.

As for the discontinuance effective January 1, 2106, this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of June, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 16, 2016.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability  
Attorney [REDACTED]